

Los Alamos National Laboratory — Supplemental Instructions

Section: 37 **Service Subcontracting**

Subject: 37.1 **Consultant/Borrowed Personnel Agreements**

PURPOSE:	This Supplemental Instruction (SI) is to establish the authorities and subcontracting responsibilities for consulting agreements and borrowed personnel agreements.
POLICY:	Consultants or borrowed personnel will be employed by the Laboratory only when the Laboratory is the prime beneficiary and when such services are necessary to the performance of the Laboratory's work under the Prime Contract.
SCOPE:	This SI applies to all consultant and borrowed personnel agreements at LANL.
DEFINITIONS:	
Borrowed Personnel	Borrowed personnel refers to the contractual relationship established with an individual whose employment agreement with his/her employer prohibits outside consulting. The agreement is established with the parent company for the services of one or more of its employees. While the individual does not receive direct payment for services rendered, he/she may be directly reimbursed for travel expenses under special circumstances.
Consultant	A consultant is an individual acting on his or her own behalf who provides expert advisory or assistance services of a technical or professional nature on a fee or per diem basis. Current Laboratory employees may <u>not</u> be Laboratory consultants. For the purposes of this SI, "consultant" will refer to both borrowed personnel and consultants.
Consultant Work Authorization (CWA)	A <i>Consultant Work Authorization (CWA)</i> (Form 1643) is the formal mechanism by which the requester authorizes a consultant to perform services under a consultant agreement.
External Review Committee (ERC)	An external review committee (ERC) is a committee appointed by the Laboratory Director to benchmark the Laboratory's products and operational processes against the products and operational processes of top research institutions worldwide. ERCs provide assessments of division and program office projects to the Laboratory Director and the Laboratory Leadership Council. ERCs are also known as external advisory committees (EACs) and division advisory committees (DACs).
Foreign National	A foreign national is an individual who is not a United States citizen, including a permanent resident alien or an immigrant alien who is permitted to work in the U.S. for an indefinite period of time.

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DEFINITIONS: (cont.)

Organizational Conflict of Interest (OCI)

Organizational conflict of interest means a relationship or situation exists in which an offeror has past, present, or currently planned interests that relate to the work to be performed under a Laboratory subcontract and may reasonably (1) diminish its capacity to give impartial, technically sound, and/or objective assistance and advice or (2) result in it being given an unfair competitive advantage. An unfair competitive advantage does not include the normal flow of benefits from the performance of a subcontract.

Requester

For the purposes of this SI, a requester is a Laboratory employee who possesses the necessary background to monitor the technical performance of the consultant.

Unallowable Consulting Services

Legal, accounting and consulting services incurred in connection with the following are unallowable under the Laboratory's Prime Contract:

- The preparation and issuance of stock, rights, organization or reorganization;
- The prosecution of judicial or administrative proceedings against the United States or the defense of judicial or administrative proceedings and investigations under the Major Fraud Act into alleged violations of statutes or regulations by the United States against the University, except as permitted by the Equal Access to Justice Act and except as otherwise approved by DOE; and
- The prosecution of patent infringement litigation, except where incurred pursuant to the *Litigation and Claims* clause of the Prime Contract.

Consultant Agreement Request

To request consultant services, the requester must submit a *Consultant Agreement Request* (Form 1098) to BUS-5, Team 5, Consultant Contract Services (CCS). The requester's division director or designee (if this authority has been delegated) must sign the *Request*. See "Consultant Services Package" in SP 37.1, Consultant and Personal Services, for information that must accompany the *Request*.

Certification — A *Certification* (see Exhibit 37.1a), signed by the requester, must also be submitted with the package. Responsibility for signing the *Certification* cannot be delegated to another individual.

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PROCEDURES:

(cont.)

Forms Availability

Forms are available from the Internet through either the Mosaic or Netscape applications or from Stores. Requesters will need Jetform Filler software to complete the forms on-line. The software is available free from CIC-2 at 7-HELP.

Résumé — If the requesting organization has difficulty obtaining an individual's résumé due to language barriers, etc., the requester must furnish documentation of the individual's qualifications to the procurement specialist.

ERC Membership

A consultant may serve as a member of an ERC. While a formal sole-source justification is not necessary if the consultant will be an ERC member, documentation addressing why the particular member is desired should be included in the subcontract file. This documentation should consist of the letter appointing or inviting the individual to serve on the ERC and a memo addressing the Laboratory's need for the ERC.

Retirees

Retired Laboratory employees whose services are subsequently needed are rehired as casual Associate Program employees (Associates) rather than as consultants. The Laboratory's Associates program is administered by the Human Resource Division. See Administrative Manual 1115.01 for further details.

Solicitations

A written *Request for Proposal (RFP)* is required for fee agreements if the estimated total agreement amount exceeds the small purchase threshold (see SP 13.1, Small Purchases).

Written solicitations may also be used when all issues cannot be negotiated or resolved by phone or fax. The following documents should accompany the *RFP*:

- A sample agreement;
- The Laboratory's general provisions;
- The Statement-of-Work;
- An OCI packet, if applicable; and
- Any other documents necessary to give the consultant a clear understanding of the requirements.

Oral Solicitations — Oral solicitations are acceptable under the small purchase threshold. If the individual has not had a

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PROCEDURES:
(cont.)

consultant agreement with the Laboratory previously, it will probably be necessary to informally send him/her the sample agreement, etc., for review. If negotiations are conducted orally, include a brief memo in the subcontract file to show the negotiated price and basis for reasonableness.

Oral solicitations may be used for requirements exceeding the small purchase threshold when there is an urgent need and there is insufficient time to issue a written solicitation. The requester must explain the urgency and the subcontract file should be documented to show why an oral solicitation was used, all relevant issues discussed, negotiated fee and its basis, and any other matters that need to be a part of the record. Written confirmation of the negotiations should be obtained from the consultant, if feasible.

No-Fee Agreements — A solicitation is not required for no-fee agreements if there are no organizational conflict of interest (OCI) issues involved. The consultant should be contacted to determine if a no-fee agreement is acceptable and if any issues need clarification. The agreement is mailed for signature. An OCI review of the Statement-of-Work should be performed and the subcontract file documented.

**Foreign
Ownership,
Control, or
Influence (FOCI)**

FOCI documents are not required for consultants per memorandum from DOE dated February 10, 1994.

Security

A review of the consultant's *Personal Security Questionnaire* packet must be conducted by FSS-15 before a security clearance can be issued.

Foreign Nationals

When the consultant is a foreign national, the procurement specialist must

- Send a copy of the *Consultant Agreement Request* and the *Consultant Work Authorization* to Human Resources- Staffing (HR-S) and
- Instruct the requester to contact HR-S for issuance of an appropriate visa (if not already done).

All foreign nationals, including permanent resident aliens, must have the appropriate visa documents and DOE approval prior to visiting the Laboratory.

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PROCEDURES:
(cont.)

The requester must

- Notify Human Resources-Staffing (HR-S) when they intend to use the services of a foreign national;
- Ensure that the foreign national presents his/her visa documents to HR-S immediately upon arrival at the Laboratory; and
- Obtain any other required approvals as identified in the Administrative Manual.

HR-S will

- Obtain the necessary visa documents, if required; and
- Determine if the foreign national has the appropriate type of visa to legally receive payment and/or reimbursement of expenses.

OCI

The procurement specialist must review all requests for services to determine whether the type of work requires Organizational Conflicts of Interest (OCI) review. The policies and procedures of SP 9.3, Organizational Conflicts Interest, apply to agreements for the following types of work:

- Evaluation services or activities;
- Technical consulting and management support services;
- Professional services; or
- Other contractual situations where there is a reasonable possibility than an OCI may exist or arise.

See SP 9.3 for specific definitions and further guidance

Service Days

Consultants are allowed up to 90 fee-paid days of service, within a one year period, from the beginning date of the agreement.

Exceptions — Exceptions must be approved by the requester's division director with the concurrence of the procurement specialist. The maximum number of fee-paid days must not exceed 120 within a one-year period, from the beginning date of the agreement.

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PROCEDURES: (cont.)

Fees

Daily fees are negotiated between the procurement specialist and the consultant. The consultant should furnish information to help the procurement specialist substantiate that the proposed fee is fair and reasonable. Examples of acceptable documentation are verification of salary at an individual's place of employment or copies of two or more recent agreements for similar services at the same or higher fee. If the consultant has no prior agreements and is unable to furnish documentation, some other method of price analysis must be used, such as comparison with

- Other Laboratory consultants within the same area of expertise;
- Laboratory employees with comparable education and experience;
- The data base within BUS-5 CCS, which contains a history of consultant fees paid; or
- Historical data that can be obtained from a Laboratory cost/price analyst or other advice from a cost/price analyst.

If it is not possible to negotiate a fair and reasonable price, the requester should be contacted. If the requirement cannot be canceled, a letter of justification must be written by the requester to authorize the higher fee. Justification should include the efforts made to locate another source and the impact on the mission if the requested services are not performed. The justification should be signed by the requester's division director.

External Review Committee Members — Consultants who are members of an External Review Committee may, at the discretion of the sponsoring organization, receive equal daily fees, rather than their normal consultant fees. An equal rate is established by CCS in consultation with the sponsoring organization.

Fees in Excess of \$500/Day — Fees in excess of \$500/day require approval by the requester's division director and DOE.

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PROCEDURES: (cont.)

Consultant Work Authorization (CWA)

A CWA is submitted by the requester to consultant through the BUS-5 CCS section each time the consultant is to perform services. A blanket CWA may be established if the following conditions apply:

- The work to be performed is intermittent over an extended period to time, and either no travel is involved or all travel is within New Mexico;
- The not-to-exceed amount is adequate to cover the entire period of performance; and
- The CWA does not extend beyond fiscal year end or the subcontract period, whichever comes first.

The requester must submit a CWA for foreign visitors at least 90 days in advance, or as soon as the information is available.

The CWA indicates which expenses are authorized for the particular visit, e.g., travel, fee, subsistence, rental car, and a total not-to-exceed amount. The not-to-exceed amount cannot be exceeded without amending the CWA.

The procurement specialist must review the CWA to ensure that it is in accordance with the terms of the agreement and that the not-to-exceed amount is realistic.

A copy of the CWA must be forwarded to the consultant. If there is insufficient time to mail the CWA, work may be authorized by the requester verbally or by fax after coordination with the procurement specialist. Copies of the CWA must be distributed to Travel, Payroll, Facilities Safeguards and Security (if the consultant requires a security clearance), and HR-S (if the consultant is a foreign national).

A separate CWA is required for each round-trip, unless the travel is within the state of New Mexico.

Note: If the requester authorizes the consultant to perform work but fails to submit a CWA, the incident is considered to be an unauthorized commitment. See SI 1.3, Ratification of Unauthorized Commitments.

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PROCEDURES: (cont.)

Allowable Expenses

Consultants are reimbursed for travel and per diem expenses in accordance with the *Federal Acquisition Regulations* and Laboratory travel policy. Secretarial services and computer time are not considered allowable expenses.

Government-Furnished Property (GFP)

Consultants are expected to furnish all property necessary to perform the required services. GFP must not be provided to the consultant after the agreement has been awarded unless there is a change in the technical scope of work and adequate justification is provided to the procurement specialist. The Procurement Manager must review and approve any need to provide GFP after award.

All property provided to a consultant must be identified in the agreement before the property is furnished. A shipping manifest must be prepared and signed by the requesting organization and submitted through the procurement specialist to BUS-6 before any property is shipped.

Note: Failure to comply with this requirement will result in the consultant being directed to return the property to the Laboratory immediately.

Consideration — Consideration must be given in the development of the daily fee when it is necessary to furnish GFP to the consultant. Fair market value is used when determining the appropriate amount of consideration. Fair market value is divided by the number of days the consultant will be in possession of the property. Attempts to obtain consideration should be documented in the subcontract file.

Renewal Notices

At least three months before an agreement expires, a notice should be mailed to the requester reminding him/her of the expiration date and that the required documentation should be submitted as soon as possible if the agreement is to be renewed.

Close-out

Upon expiration or termination of a consultant agreement, the procurement specialist must send a memo to the requester for completion. At a minimum, the memo should ask whether the services were performed in accordance with the statement of work, whether the services were satisfactory, and what is the disposition of any government-furnished-property. The memo is required, even if a follow-on agreement is being requested, but is not required if the agreement is extended. Documentation

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PROCEDURES:

Close-out (*cont.*)

must be furnished by the requester to indicate disposition or return of GFP. If GFP was involved in the agreement, a copy of the close-out memo must be sent to BUS-6. The subcontract file should be organized in accordance with SI Exhibit 4.3d.

REVIEWS/

APPROVALS:

DOE

DOE approval is required for daily fees in excess of \$500.

DOE approval is not required for a follow-on agreement or extension of the period of performance when it has been previously obtained and there is no change in the fee, the scope of work, or the consultant's OCI status.

RESPONSIBILITIES:

Procurement Specialist

The procurement specialist must

- Review the *Consultant Agreement Request* for completeness and to determine whether the type of work requires OCI review;
- Determine the reasonableness of the consultant's daily fee;
- If the consultant is a foreign national, send HR-S a copy of the *Consultant Agreement Request* and *Work Authorization*, and instruct the requester to contact HR-S for issuance of an appropriate visa (if not already done);
- If GFP will be provided, ensure that consideration is given when developing the daily fee, that all GFP is incorporated into the agreement, and a copy of the agreement is provided to BUS-6 and the requesting organization's property administrator;
- Provide a copy of the executed agreement to the requester; and
- If the consultant has a security clearance, send a copy of the agreement's signature page to Facilities Safeguards and Security.

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RESPONSIBILITIES:

(cont.)

Requester

The requester must ensure that

- Services are properly authorized;
- Work performed is acceptable and, if not, that the procurement specialist is notified immediately in writing;
- The consultant's claimed costs are correct;
- HR-S is notified when the services of a foreign national are to be used;
- The foreign national presents his/her passport and all visa to HR-S upon arrival at the Laboratory;
- Ensure that all appropriate security measures are taken, and/or a security clearance is obtained, if required;
- GFP, if any, is essential to performance;
- The procurement specialist is notified of any GFP to be furnished; and
- The procurement specialist and BUS-6 are notified when GFP is no longer needed.